

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Charles R. Pruitt,
Appellant,

v.

Furnas County Board of Equalization,
Appellee.

Case No: 16R 0019

Decision and Order Affirming Furnas
County Board of Equalization

Background

1. The Subject Property is a residential parcel, with a legal description of: Lots 9-12, Blk 42, Original Town Arapahoe, Arapahoe, Furnas County, Nebraska.
2. The Furnas County Assessor (the County Assessor) assessed the Subject Property at \$119,405 for tax year 2016.
3. The Taxpayer protested this value to the Furnas County Board of Equalization (the County Board) and requested an assessed value of \$55,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$75,335 for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 26, 2017, at the Younes Conference Center, 416 W. Talmadge St., Kearney, Nebraska, before Commissioner Nancy J Salmon.
7. Charles R. Pruitt was present at the hearing on behalf of the Taxpayers.
8. No one appeared for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²
11. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer acknowledged that the Assessor had placed a value of \$22,000 on two new outbuildings constructed by the Taxpayer. Mr. Pruitt did not object to this additional value. His primary complaint dealt with the value of his residence. The Taxpayer indicated that another home in his neighborhood (located at 702 Walnut) was more valuable but had a lower tax valuation than his home. The alleged comparable property is a stick built home while the Taxpayer’s residence is a modular. In addition, he stated that the alleged comparable property has a finished basement and attached garage, neither of which the Subject Property has.
17. Although the County failed to appear as required, Nebraska law requires the Taxpayer to provide proof by clear and convincing evidence that the action of the County Board was arbitrary and unreasonable. Without the Property Record Cards for the Subject Property and the alleged comparable property (which the Taxpayer would be entitled to receive from the Assessor), the Commission is unable to verify the square footage or condition of the two properties. The Commission has no powers of equity and cannot establish a value of property improvements without clear and convincing evidence. For that reason, the Commission is unable to provide further relief to the Taxpayer.

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

18. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
19. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$10,000
<u>Improvements</u>	<u>\$65,335</u>
Total	\$75,335

3. This Decision and Order, if no further action is taken, shall be certified to the Furnas County Treasurer and the Furnas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on June 28, 2017.

Signed and Sealed: June 28, 2017

Nancy J. Salmon, Commissioner